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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,525	12/08/2003	Agapios Kyriacos Agapiou	2001U039.US	4271

7590 08/18/2005

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EXAMINER

PASTERCZYK, JAMES W

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,525

Applicant(s)

AGAPIOU ET AL.

Examiner

J. Pasterczyk

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1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-13 and 15-79 is/are pending in the application.
- 4a) Of the above claim(s) 35-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-13 and 15-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-3,6-13 and 15-79 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. This Office action is in response to the amendment filed 6/15/05 and refers to the Office action mailed 3/24/05.

2. The prior art rejections over Agapiou, Kumamoto, and Hoel are withdrawn due to amendment. However, c.f. below for maintained as well as new grounds of rejection.

3. Claims 1-3, 6-13 and 15-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Step (a) of the claimed process requires that the monomers be a combination of ethylene and higher alpha olefins, yet in the second clause of (b) the catalyst activity is recited as being measured using only ethylene without a second alpha olefin as is the bulk density of the polymer produced. These two different feedstocks for the claimed process appear to be inconsistent. In addition, the scope of enablement appears to be limited to only that single metallocene and cocatalyst disclosed in the working examples with the recited range of amounts of metallocene and cocatalyst; there appears to be insufficient chemical definition of the components in claim 1 that would necessarily result in the recited productivities and bulk densities. These bulk densities are also found in claims 17 and 18.

4. Claims 1, 6, 13, 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the feedstocks used in the claimed process versus the activity and bulk density requirements are inconsistent, hence it is not clear what is intended to be claimed here.

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In claims 6, 15 and 16, the term Fouling Index appears to be somewhat subjective, even given the description in paragraph 21 of the specification.

Claim 13 now no longer limits claim 1 from which it depends; instead it broadens it.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-3, 6-13, and 15-34 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McCullough as cited in the previous Office action.

McCullough discloses the invention substantially as claimed (paragraphs 17, 18, 27, 30, 67, 77, 78, 83, 85, 94, 99, 100, 102, 106, examples 4, 6, 8, 10, 12, 14, 16, 21, 23).

McCullough does not clearly recite its amounts of catalyst or cocatalyst on the support in the units of the present claims, or the bulk density of the polymer made or the activity of the catalyst in the same units as those of the present claims, yet such calculations could be easily performed.

Since the prior art appears to disclose and claim the present invention on the basis of inherent property characteristics which either anticipate or render obvious the present claims, an alternative 102/103 rejection is deemed appropriate, and the burden of proof that it does or does not shift to applicants as in *In re Best*, 195 USPQ 430, 433 (CCPA 1977).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Pasterczyk whose telephone number is 571-272-1375. The examiner can normally be reached on M-F from 9 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached at 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

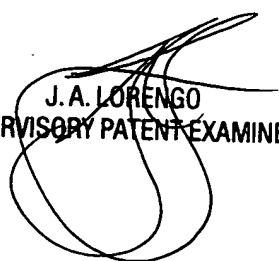
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J. Pasterczyk

AU 1755

8/9/05



J. A. LORENGO
SUPERVISORY PATENT EXAMINER